



Submission to the Department of the Environment, Heritage and Local Government: Consultation on the Draft Waste Battery Regulations

Submission S/08/003
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The Competition Authority
An tÚdarás Iomaíochta

1. Introduction and Summary

- 1.1 The Competition Authority welcomes the Minister's consultation on the draft waste battery regulations.¹ In implementing the EU Directive on Waste Batteries, the Minister is faced with the complex task of ensuring that Ireland fulfils its obligations under the Directive², while minimising the implementation costs. By facilitating entry into the waste management services market and rivalry between firms providing such services, the Minister will facilitate the pursuit of these objectives.
- 1.2 This submission identifies areas where the regulations may negatively impact on competition between providers of waste management services or between producers with obligations under the Directive. The Authority will be happy to discuss further its concerns and suggestions with the Department of Environment, Heritage and Local Government.³

¹ Draft Waste Management (Batteries and Accumulators) Regulations, 2008.

² European Parliament and Council Directive 2006/66/EC.

³ In making this submission, the Authority is pursuing its function under Section 30(1)(c) of the Competition Act, 2002, i.e. to advise the Government, Ministers of the Government and Ministers of State concerning the implications for competition in markets for goods and services of proposals for legislation.

2. Collective Schemes

- 2.1 Article 35(2)(l) of the Draft Regulations provides that a collective scheme's application for approval should be accompanied by a declaration that no producer applying for membership of the collective scheme will be discriminated against on the grounds of:
- A. *"the quantity, or as appropriate, type of batteries that he or she places on the market, or, as appropriate,*
 - B. *that the body concerned is only catering for or will only cater for –*
 - *a maximum pre-determined share of waste arising from batteries, or, as appropriate,*
 - *waste arising from batteries from a particular geographical location or locations in the State,".*
- 2.2 While the Authority appreciates that these provisions intend to alleviate concerns about anti-competitive behaviour by members of collective schemes, the Authority is not convinced of their necessity. Our reservations stem from the following:
- Competition law enforcement mechanisms are available to address anti-competitive behaviour;
 - The provisions could create disincentives for providers of waste management services or the producers themselves to enter the market, and may ultimately work against the purpose of the legislation. For instance, the provisions could prevent producers willing to set up their own schemes to cater for their own products.
- 2.3 Such regulations should only be introduced if a regulatory impact analysis of these provisions shows that the positive impact of the restrictions on the market outweighs the expected negative impacts.

3. The Proposed Registration Body

- 3.1 The draft Regulations⁴, will allow the Minister to approve the establishment of a registration body and to specify the powers vested in it. It is not clear from the draft Regulations what kind of registration body (or bodies) would be established, how accountable it/they would be and to whom. The Competition Authority is concerned by the absence of provisions guaranteeing that the body will make its decisions in an independent, transparent, non-discriminatory and proportionate fashion. Such provisions are especially necessary if the Registration Body is to emanate from industry, as, typically, such a body has more incentive and potential to discriminate against new entrants to the market. Procedures to appeal against the decisions of the registration body should be considered.
- 3.2 The Authority welcomes the safeguards proposed⁵ to protect the commercial sensitivity of the information gathered by the Registration Body, as these are key in determining firms' strategy to compete in the market place. To ensure compliance with the prohibition, adequate penalties may need to be introduced in the case of 'transgressing' individuals employed by (or managing or directing) the body(ies) concerned.
- 3.3 The draft Regulations⁶ allow the Minister to review an approval granted. The Minister may issue a revised approval, varying any condition attaching to the approval or attach any additional conditions that are considered appropriate.⁷ These conditions have the potential to increase the costs of providing waste management services. To ensure that any such additional costs are minimised and proportionate to the policy objective, the Authority suggests that any such proposal be subjected to a regulatory impact analysis. Such an analysis should involve a public consultation that goes beyond merely consulting the body whose approval is being reviewed. Any interested party should be able to respond to the consultation.

⁴ Article 12.

⁵ Article 16(3).

⁶ Article 14(1).

⁷ Article 14(3).

4. The Registration Body and the EPA and Compliance

- 4.1 There may be benefits in introducing a formal reporting mechanism from the registration body and the EPA to the Minister for the Environment, Heritage and Local Government. Such reporting would, for instance, inform the Minister's decisions regarding whether to amend the legislation/regulations or to introduce new targets or ensure equitable distribution of producer responsibility under the Draft Regulations. It would also allow the EPA to advise the Minister on the adequacy of powers and resources applied to enforcement. The adequacy of such powers and resources are not only critical to Ireland's ability to fulfil its obligations under the Waste Battery Directive, they are also critical to firms as they impact on their ability to compete in the market place. In the absence of adequate enforcement mechanisms, non-compliant firms could unlawfully gain a significant competitive advantage in the market place, putting their compliant competitor at a disadvantage.